Judgment of the Lords of the Judicial Committee of the Privy Council on the Consolidated Appeals of the Labrador Company v. *The Queen, and The Queen* v. *The Labrador Company, from the Court of Queen's Bench of Lower Canada, Province of Quebec; delivered* 19th *November* 1892.

Present :

Lord WATSON.
Lord HOBHOUSE.
Lord MACNAGHTEN.
Lord MORRIS.
Lord HANNEN.

[*Delivered by Lord Hannen.*]

The subject matter of these appeals is a tract of country on the northern shore of the Gulf of the St. Lawrence, extending from Cape Cormorant to the Strait of Belle Isle, a distance of more than 400 miles, with a depth of six miles.

The Labrador Company is in possession of this territory. The ttorney General for the Province of Quebec, on behalf of Her lajesty, seeks to recover it from the Company, who claim title) the whole of the land in question under a Grant alleged to ave been made in 1661 to one François Bissot by « the Com- any of New France, » deriving its powers from the Crown of rance. The Labrador Company also claimed a title by pres- ription and immemorial possession. In answer to this claim the ttorney General denies that the alleged Grant of 1661 gave a itle to the land in question, or that a title by prescription can e acquired against the Crown. He also alleges that the Grant o Bissot was revoked by the French Crown and abandoned by Bissot's successors in title. The Company further rely on certain lleged acts of recognition by the Crown, which they contend reclude the Crown from setting up the said revocation and bandonment of the Grant, or from denying its validity.

The judgment of the Superior Court affirmed the title of the Crown to the larger portion (about 250 miles) of the tract in lispute, leaving the Company in possession of the rest. The iver Agwanus or Gognish was taken as the dividing line, the Crown recovering all that lies to the east of that river, and the Company keeping all that lies to the west.

Both parties appealed from the judgment, and the Court of Queen's Bench dismissed both appeals.

The basis of the Company's claim is the alleged Grant of the 25th February 1661. It is necessary therefore, in the first place, to examine the nature and extent of this Grant. In 1627 a Com- pany, called the Company of New France (or of the *Cent Asso- ciés*) was formed, to which the King of France conceded the *pays de la Nouvelle France*, including the land in question, « *en « toute proprieté, justice et seigneurie,* » with the right to distribute the lands (Record, p. 67). The rights of this Company were

subsequently surrendered to the King, and by him ceded to a fresh Company, called « the Company of the « West Indies ; » but, in 1661, while the Company of New France retained its original powers, it made, on the 25th February of that year, a Grant to François Bissot, under whom the Labrador Company claim as successors in title.

This Grant is no longer in existence, the original document, as well as the copy supplied to Bissot, having been destroyed by fire. Before their destruction, however, François Bissot, on the 11th February 1668, made an *aveu* or declaration, to the Company of the West Indies, the successors of the Company of New France, setting forth the Grant made to him by the last-named Company in 1661. This *aveu* has been preserved, and it has been treated throughout these proceedings as containing a correct statement of the original Grant.

This *aveu* is in the following terms (Record, p. 84) :—

« *François Bissot, Sr. de la Rivière, lequel avoue et déclare tenir de nos Seigneurs l'Isle aux Œufs, située au dessous de Tadoussac, vers les Montpellès, du costé du Nord, quarante lieues ou environ dud. Tadoussac, avec le droit et faculté de chasse et d'établir en terre ferme aux endroits qu'il trouvera plus commodes, la pesche sédentaire des loups marins, baleines, marsouins, et les autres négoces, depuis la dite Isle aux Œufs jusqu'aux Sept Isles et dans la Grande Anse, vers les Esquimaux où les Espagnols font ordinairement la pesche, avec les bois et terres nécessaires pour faire le dit établissement. Le tout à luy appartenant par titre de concession en date du vingt cinq Février mil six cent soixante et un, signé par extrait des délibérations de la Compagnie de la Nouvelle France, A. Chefault, à la charye de payer par chacun an, deux castors d'hyver, ou dix livres tournois au receveur de la dite Compagnie, et les droits accoutumés pour la traite à la communauté de ce pays, au bas duquel titre est écrit Dubois Danaugour, ratiffié le don que dessus*

de laquelle dite déclaration il nous a requis acte et a signé. Ainsi signé, Bissot, avec paraphe.

« Sur quoy, oüy le procureur fiscal, nous avons accordé acte au dit sieur Bissot de son dit aveu et déclaration, et iceley condamné payer la dite redevance, tant pour le passé que pour ladvenir, suivant et conformément au dit titre de concession, sans néantmoins que le dit acte puisse être tiré à conséquence n'y préjudice, remettant au Roy ou à la Compagnie de faire valoir le dit titre ou point. Mandons, &c.

Donné par nous Louis Théandre Chartier, Escuyer, Seigneur de Lotbinière, Conseiller du Roy, Lieutenant-Général Civil et Criminel, à Québec, les assizes tenant le onzième jour de Février mil six cent soixante-huit.»

It is not disputed that this concession gave to Bissot the seigneurie of the *Isle aux Œufs*, situated some distance to the west of Cape Cormorant, the western boundary of the land now in question. The contest arises on the passage commencing: *« Avec le droit et faculté de chasse, &c.»*

For the Crown it is contended that the effect of the Grant is to give the seigneurie of the *Isle aux Œufs*, with the accessory right of hunting, &c., on the mainland within certain limits, the extent of which will be considered later. The Company, on the other hand, contend that this Grant gave a seigneurie, not only in the *Isle aux Œufs*, but in the territory on the mainland within the defined limits.

Their Lordships are of opinion that this contention of the Company is wholly untenable. They agree on this point with the opinion expressed by all the Judges in the Courts below, that the rights to be exercised on the mainland are only accessory to the seigneurie of the island. They consist in the permission (not to take possession of a defined district on the mainland,

but) to establish at such places as may be most convenient, fixed stations for the capture of seals, &c., with the privilege of taking the timber and land necessary for the establishment of such stations. This last-mentioned provision effectually excludes the idea that the whole land was conceded to Bissot in fee, in which case it would have been superfluous to give him the right to take the wood and land necessary for the stations. Further, the reservation of an annualpayment of two beaver skins for the right to hunt and fish is stated by the Chief Justice Sir A. A. Dorion, in the judgment of himself and his colleagues, to be inconsistent with the hypothesis that a fief on the mainland was granted, and this appears also to have been the opinion of Mr Justice Routhier, and it has not been controverted before this Board.

One fact remains to be noticed, tending strongly to negative the Company's contention that a seigneurie on the mainland was conceded by the Grant of 1661. That document contains no limitation inland of the supposed fief. It might therefore as well have been made the basis of a claim to the whole territory northwards forming part of *La Nouvelle France*, as to the land for six miles inland. A license to make stations for fishing and hunting, and trading with the natives in an unsettled country might naturally be given without fixing its limits inland, but it cannot be supposed that a fief would be created without some indication of what its boundaries were to be.

This leads to the consideration of the question, over what extent of territory on the mainland is the right of establishing stations for fishing, &c., conceded ? It is thus defined : *Depuis « la dite Isle aux Œufs jusqu'aux Sept Isles, et dans la Grande « Anse, vers les Esquimaux où les Espagnols font ordinairement la « pesche,* » that is, « from the said *Isle aux Œufs* up to the Seven « Islands, and in the great cove in the direction of the Esqui-

« maux where the Spaniards usually fish. » In English there can be no doubt this means that the fishing stations may be established in the land between the *Isle aux Œufs* and the Seven Islands, and also in the *Grande Anse*. It has, however, been contended that the proper construction of the French is different, and that the force of the word « *jusque* » is carried on to the word « *dans*, » and that the passage has the same meaning as if it had run « *jusqu'aux Sept Isles et jusque dans la Grande Anse.* « No authority for this construction has been given, and all the Judges of the Court below, whose mother tongue is French, agree that the right of establishing a station in the *Grande Anse* is distinct from the right to make stations up to the Sept Isles. Mr. Justice Routhier says (Record, p. 730) : « *ces derniers mots* » *comprenaient-ils toute la terre ferme depuis les Sept Isles jusqu'à* « *la Grande Anse ? Je ne le crois pas, car autrement, on aurait fixé* « *l'étendue de la concession depuis l'Isle aux Œufs jusque dans la Grande Anse.* » And Chief Justice Dorion thus paraphrases the Grand (Record, p. 764) : « *Que la concession était de l'Isle aux Œufs* « *en seigneurie, et de plus le droit de fair des établissements de* « *péche et de chasse sur la côte Nord jusqu'au Sept Isles, puis dans* « *la Grande Anse vers les Esquimaux.* » Their Lordships have no doubt that this is the correct interpretation of the grant, and that it conceded to Bissot no seigneurie on the mainland, but only a right to make establishments for fishing and hunting up to Sept Isles and also in the *Grande Anse*. Where that *Grande Anse* was situated will be considered hereafter.

It may be convenient at this point to refer, in order of date, to a map of 1678, which has been relied on as showing that a seigneurie on the mainland was recognized as belonging to Bissot. This map is described as one « *pour servir à l'éclaircissement du* « *papier terrier de la Nouvelle France*, » and was dedicated to the Minister Colbert by the Intendant Duchesneau. Upon this map is printed « *Seigneurie du Sieur Bissot*, » stretching along the

coast from a little east of the *Sept Isles* to a place about two-thirds along the « *Isles de Mingan.* » These islands follow one another to a river along which is written « *Esquimaux,* » and at a short distance eastward « *Baye des Espagnols* » is inscribed.

The bearing of this map on the question of boundary will, so far as is necessary, be referred to by-and-by. Its value as evidence of a seigneurie on the mainland is now the subject of consideration. The utmost effect that could be given to this map would be as evidence of reputation at the date it bears of the existence of such seigneurie; but this must necessarily give way before the proof which the representatives of Bissot have supplied that this grant to him did not in fact concede a seigneurie on the mainland. But undue importance has been given to this inscription on the map. Bissot had, in fact, a seigneurie, namely, that of the *Isle aux Œufs*, to which belonged as an accessory a right of making establishments for hunting, fishing, &c., on the mainland. It was not necessary for the purpose of the chartographer that all this should be set out on the map What was of importance to him was to indicate over what extent of coast Bissot exercised rights whatever they might be, and he did this by writing the words referred to. This interpretation is indeed impliedly adopted by Mr. Justice Routhier, who is most favourable to the contention of the Labrador Company. He says (Record, p. 731), speaking of the right of continuing the establishment of Mingan, « *Comme cette exploitation* « *était un accessoire de l'ancienne seigneurie de l'Ile aux Œufs, il* « *n'est pas étonnant que depuis des temps reculés on l'ait appelé sei-* « *gneurie du sieur Bissot.* »

But it is contended, on behalf of the Labrador Company, that, even if the grant of 1661 did not in itself create a seigneurie on the mainland in favour of Bissot, this effect was produced by an *Ordonnance* of Intendant Hocquart in 1733, and the subsequent action upon it by the French Crown.

This *Ordonnance* was pronounced in a suit instituted in 1732, by Pierre Carlier, the *Adjudicataire Général des Fermes Unies de France, et du Domaine d'occident*, against the heirs of François Bissot (who had died in 1676), and the heirs of Sieurs Lalande and Louis Jolyet, to whom the seigneuries of the isles and islets of Mingan had been granted by the French Crown in 1679, calling upon them to show by virtue of what title they had taken possession of the territory occupied by them on the *terre du nord* (*i. e.*, the mainland north of the St. Lawrence) below the river Moisy up to the Bay of the Spaniards.

The *Adjudicataire Général* did not dispute the title of Jolyet (deceased) to the Isles of Mingan, described in the Grant of 1679 (Record, p. 225), as the « *Islets du Mingan du côté du nord et qui « se suivent jusqu'à l'anse des Espagnols.* » He only required the title to anything claimed on the mainland. The seigneurie of the isles and islets of Mingan will therefore only be of importance in considering the question of boundary.

In answer to the demand of the *Adjudicataire Général* the Defendants relied solely on the Grant of 1661, under which they alleged they had formed establishments and had continual possession for 71 years, and they conclude by a specific claim to be maintained in the possession and enjoyment of the lands granted to François Bissot, deceased, « in accordance with the « title of concession of the 25th February 1661. » (Record, p. 228, line 34.)

In reply the *Adjudicataire Général*, after taking the objection, not now insisted on, that the Grant of 1661 was in conflict with certain earlier grants, said that, admitting the Grant of 1661 and the declaration of 1668 as valid title-deeds, and construing them in the sense most favourable to the Defendants. the Grant gave no proprietary title except on the *Isle aux Œufs*. On the mainland it conferred no right of ownership, but only the right to

establish there « *la pesche sédentaire*, » from *l'Isle aux Œufs* up to the Seven Isles and in the Bay of the Spaniards, « a right, » he continues, « which it would have been useless to express, if the « intention of the concession had been to give a right of property « and which by its expression positively excludes a right of « property. » He then presents substantially the arguments againts the then Defendants' claim, which have been repeated before this Board, and he proceeds, « Though the Defendants « have not even the right to make establishments in the tract of « country from the Seven Islands up to the Bay of the Spaniards, « it is in consequence of their title of concession that Bissot, « deceased, has founded the establishment of Mingan continued « by the Defendants, for which they allege a continued possession « of 71 years. Having regard to this long enjoyment of the sei- « gneurie of Mingan, he will not dispute it, provided that they « be limited to a concession of which the limits shall be certain « and determined, so that they cannot injure or prejudice the « *Traites du Domaine du Roi.* It is at Mingan that they have « fixed their establishment on the mainland. The Farmer-Gene- « ral will not offer opposition to the enjoyment of it being con- « tinued to them, and even that the property in it be accorded « to them by a new title, if His Majesty should think fit to « accord to them as recompense the establishments which they « have made there. » The Mingan here referred to as the place where the Defendants are said to have fixed their establishment on the mainland is a station on the mainland opposite to the islands of Mingan, and is marked on several maps as the Mingan settlement.

The *Adjudicataire Général* concludes by demanding that he be maintained in his right, to the exclusion of all others, to exercise trading, hunting, fishing, and commerce in the tract of the *domaine* between l'*Isle aux Coudres* up to and including the river Moisy, that the Defendants be condemned to pay him the arrears

of the annual dues of two beaver skins or ten *livres Tournois* from 1661 to the then present year, unless they should prefer to give up (*se désister de*) the said concession, and consent to the reunion to the *domaine* of the said seigneurie of the *Isle aux Œufs*, which they long since abandoned, and moreover also to pay the dues for the trading which they had carried on at Mingan; and that the said Defendants be bound to take a new title for the establishment made by them at Mingan aforesaid, to commence from Cormorant Point (« *en allant* ») in the direction of the Bay of the Spaniards, with such depth and on (payment of) such dues as it should please His Majesty to accord them.

By way of rejoinder to the reply of the *Adjudicataire Général*, the Defendants reassert in general terms their claims, and ask whether their possession for 70 years, and the expenses they have been put to, and the losses they have suffered from the English in times of war, ought not to serve them in the place of title, and they conclude that though they have proved their right, they consent to the river Moisy being the western limit of their concession up to the Bay of the Spaniards, and therefore they pray that they may be relieved from the payment of the dues with which that territory is charged, and that they may be given a new title to it.

This was the state of the controversy which the Intendant Hocquart had to decide. After reviewing the pleadings, Monsieur Hocquart gave his judgment as follows:—

He took notice of the abandonment by the Defendants of the territory conceded to François Bissot, deceased, by the Company of *Nouvelle France* on the 25th February 1661 from the *Isle aux Œufs* up to the river Moisy, and in consequence, as far as was necessary, reunited to the domain of His Majesty the said territory conceded to the said François Bissot from and including the *Isle aux Œufs* to Cormorant Point, four or five leagues below

the River Moisy; forbade the Defendants and all others directly or indirectly to exercise any trading, hunting, fishing, commerce, or establishment in the territory so reunited, or in the said river Moisy and its affluent lakes and rivers; and, in consideration of the abandonment aforesaid by the Defendants, he discharged them from any arrears which might be due from them, and « as to the new title of concession required by them « for the establishment made by them and their predecessor « François Bissot at the place of Mingan aforesaid, the parties « shall apply to His Majesty to obtain the same, with such fron- « tage and depth and on payment of such dues as His Majesty « shall be pleased to grant. »

The effect of this *Ordonnance* was entirely to put an end to the seigneurie in the *Isle aux Œufs*, and to the rights, whatever they were, which had been conceded to Bissot by the original grant, as far as Cormorant Point, and to reannex the district from and including the said *Isle aux Œufs* up to Cormorant Point to the domain of the King. This, with the remission of the arrears, was the whole operative part of the *Ordonnance*. As to the request of the Defendants that the limits of their concession should be from the River Moisy to the Bay of the Spaniards, and that of this district a new title should be granted to them, this was not acceded to. The district for five or six leagues eastward of the River Moisy was reunited to the Crown, and no mention whatever of the Bay of the Spaniards is made, and the Defendants are remitted to the Crown to obtain a new title for « the establishment made by them and the said Fran- « çois Bissot, at the place of Mingan aforesaid, » for such frontage and depth as His Majesty might think fit to grant.

François Bissot, the son, addressed several petitions for a new title to the Comte de Maurepas, the French Secretary of State. In these petitions (Record, p. 243) he set out the substance of

the original Grant of 1661, explained that his father had made his first establishment at Mingan, where the family residence was formed, but that he had made many others at different places, which, after they had been destroyed by the English, had been from time to time reestablished. He stated that the limits of the Royal domain had been fixed by Hocquart at Cormorant Point, and he prayed that he might be continued in the remainder of his concession from that point « down the « river to the conceded « lands» (by which appears to be meant, conceded to other persons), and the exclusive privilege of continuing there his establishments, and others if possible, for the hunting of seals, with the rights of hunting and trading with the savages as he and his late father had enjoyed for 70 years.

The result of a correspondence which followed between the Comte de Maurepas and the Marquis de Beauharnois, the Governor of *la Nouvelle France*, and the Intendant Hocquart, was that the Comte de Maurepas stated, in a letter to MM. de Beauharnois and Hocquart (Record, p. 268), that the circumstances of the case would have determined him to propose to the King to confirm the heirs of Bissot in the possession of a part of the coast conceded by the Grant of 1661, and to fix their condition ; but that, having regard to the existing circumstances of the family, and the discussions which such a confirmation might give rise to, he had taken the course recommended by MM. de Beauharnois and Hocquart, to suspend all determination on the subject, and that he had only induced the King to agree that the heirs (of Bissot) should enjoy such extent of coast as they (Beauharnois and Hocquart) had designated in their letter, from the boundary of *Tadoussac* down the river to the concession of the *Sieur Lafontaine*, with such depth as they (Beauharnois and Hocquart) should think right to fix ; and he concluded with a request that they would consider whether it would be convenient to leave them this extent of territory, or whether it would not

be r[illegible] to reduce it for the purpose of locating other concessio[illegible].

It does not appear that these suggestions of M. de Maurepas were ever communicated to the heirs of Bissot. No new title was ever granted to them. This letter imports no engagement on the part of the Crown to give one ; it contains only the expression of a possible intention to do so if, upon the examination of this matter by MM. Beauharnois and Hocquart, it should be thought expedient. No further action on the subject is shown. No boundary inland was ever fixed. All that can be inferred is that the representatives of Bissot continued to carry on their stations for fishing, &c., at Mingan as before. Their Lordships, therefore, are of opinion that the judgment of Hocquart and the action of the French Crown upon it did not create or recognize any title in the heirs of Bissot to a seigneurie on the mainland.

Nothing between the date of M. de Maurepas' letter, down to the cession of Canada to England in 1763, calls for observation. In 1766 the representatives of François Bissot laid before the British Government a claim to be proprietors of the *terre ferme de Mingan*, commonly called « the seigneurie and post of Mingan. » In support of their claim they do not appear to have furnished evidence of the contents of the Grant of 1661, but they relied on an « *Acte de Notoriété*, » signed by several citizens and notables of Quebec, two of whom, at least, were parties interested, to prove an immemorial possession of the seigneurie of the mainland of Mingan by the heirs of MM. F. Bissot and Lewis Jolyet This claim was referred to the Law Officers of the Crown in England, who, in the year 1768, reported upon it. After observing (Record, p. 316) that « the claim is of an exclusive right of « property in the soil containing originally, in extent along the « north shore of the River St. Lawrence from the Isle of Eggs to « the Bay Phellipeaux which appears to be about 500 miles, and

« in depth into the country without bounds or limitation, » but of which a space of about 30 leagues from Egg Island to Cape Cormorant was acknowledged to have been surrendered, the Law Officers comment on the uncertainty of the grant as well as of possession, and they conclude, « Under these circumstances, « we are of opinion that this claim, standing as it does at present « upon these papers, could not in any judicial inquiry be allowed « in point of law as valid and effectual ; at the same time there « is reason to think that some part of this family has been in « some kind of legitimate and authorized possession of some « particular parts of the shore within the limits described, but « the ground, the nature, and extent of such possession does not « appear at present in such authentic manner as to be capable « of receiving any judicial confirmation. »

In 1781 the claimants appear to have endeavoured to supply the want of proof thus pointed out. On the 28th May in that year (Record, p. 355) F. J. Cugnet, on behalf of himself and others named, claiming to be seigneurs and proprietors in undivided shares of the seigneurial fiefs of the isles and islets of Mingan, of the isle of Anticosty, and of the *terre ferme de Mingan*, is alleged to have presented an Act of *foi et hommage* in respect of the said fiefs and seigneuries. A document of this date and to this effect is found in the register of *foi et hommage*, and it states that the « *Seigneurie de la terre ferme de Mingan,* » commencing at Cape Cormorant, « *jusqu'à la grande Ance vers les Esquimaux ou « les Espagnols faisaient ordinairement la pêche sur deux lieux de « profondeur,* » was conceded by the Company (of *La Nouvelle France*) on the 25th February 1661, to the Sieur François Bissot. Appended to this document is a certificate of Cugnet himself (who appears to have held the office of keeper of the *Papier Terrier*) that this *foi et hommage* had been presented, but it is not signed by the Governor, and therefore has not validity. But from its having been found in the registry it has since been

frequently assumed, though erroneously, to have had an official character.

This document contains two statements which are now known to be untrue, whether wilfully or not, it is unnecessary to inquire. The one is that the Grant of 1661 conceded a seigneurie from Cape Cormorant as far as the *Grande Anse.* It omits altogether the mention of the *Sept Isles*, and changes the language with regard to the *Grande Anse.* The second is that it introduces a limitation inland, thus supplying words which would meet the objection taken as to the uncertainty of the grant in this respect. It is said that these words are introduced in the margin of the document, but as the original is not before them, their Lordships cannot verify this statement.

The effect of these inaccuracies, whether intended or not, was that in 1803 MM. Vondenvelden and Charland, surveyors, in a work on the subject of the titles of ancient concessions (Record, p. 407), include that of *la terre ferme de Mingan*, on the authority of the supposed Act of *foi et hommage* of 1781; and from this work the same error has been derived and continued in subsequent transactions. Thus in 1805, in an action at the suit of Ralph Rosslewin against one Crawford and others (Record, p. 415), the sheriff seized fifteen thirty-second undivided parts of the seigneurie of the Isles Mingan, « with all the rights in « the seigniory of the mainland of Mingan.» The Procureur Général claimed the *droit de quint* due to the Crown on the sale. The matter was referred to the arbitration of M. Planté, an advocate, who gave his decision and based it upon the supposition that the Grant of 1661 was a concession of the *terre ferme de Mingan* to Sieur Fr. Bissot, and refers for his authority to the false entry of the 28th May 1781 in the register of *foi et hommage* and the work of MM. Vondenvelden et Charland. The demand and receipt on this occasion of the *droit de*

quint by the Procureur Général has been relied on by the Company as a recognition by the Crown of their title to a seigneurie of the *terre ferme de Mingan.* There is no proof that it was paid, but assuming that it was, it does not amount to a recognition by the Crown. A recognition to be effectual for the purpose of curing a defective title must be made with knowledge of the defects to be cured, and no such knowledge on the part of the Crown can in this case be inferred from the mere receipt by its officer of a fiscal due, under a mistake induced by the Company's predecessors.

In 1837 James Stuart, on the part of several persons named, rendered faith and homage for, amongst other things, certain undivided shares in the *Seigneurie de la terre ferme de Mingan.* On this occasion the act of faith and homage is signed by the Governor, Lord Gosford. This would be *primâ facie* proof of the existence of some seigneurie on the mainland of Mingan but this *primâ facie* proof is rebutted by the title relied on by the claimants, namely, that supposed to be derived from the Grant of 1661, and the *Ordonnance* of Hocquart of 1733. The effect of these documents of title has been already considered.

Nothing calling for observation occurred after 1837 until the year 1854. Down to this time their Lordships are of opinion that the facts proved fail to establish that there was a seigneurie of the mainland of Mingan, or that the Crown had recognized its existence, although, chiefly from the supposed act of *foi et hommage* of 1781 containing the erroneous statement of the effect of the Grant of 1661, a reputation had arisen that there was such a seigneurie.

With regard to the claim of the Company to hold by prescription and immemorial possession, it is unnecessary to consider what would have been the effect of the evidence if the title of the Company had rested upon this basis alone, because as the

true root of their title has been shown by the Company themselves, there is no room for the application of the law of prescription. This is clearly stated by many authors of authority : « *On ne peut pas prescrire contre son titre en ce sens que l'on ne* « *peut pas se changer à soi-même la cause et le principe de sa pos-* « *session..... il suit de là que lorsque le titre est représenté, c'est* « *par lui qu'il faut régler la cause et le principe de la possession ;* « *et tant que le possesseur ne prouve pas une interversion légale* « *soit par le fait d'un tiers soit par une contradiction formelle, le* « *titre reste la loi invincible qui sert à qualifier sa possession. Il y* « *est ramené sans cesse par la loi et par la raison. C'est ce que les* « *praticiens ont voulu exprimer par ce brocard ; ad primordium* « *tituli posterior semper refertur eventus.* » Troplong, de la Prescription, 522, 4th ed.

In this state of things the Legislature of the Province of Canada, deeming it expedient to abolish all feudal rights and duties in Lower Canada, passed for this purpose the Seigniorial Act of 1854 (18 Vict., c. 3), amended by the Act of 18 Vict., c. 103 (1855), and the Seigniorial Amendment Act of 1856 (19 Vict., c. 53). The 10th section of this last-mentioned Act is as follows : « Inas- « much as the following fiefs and seigniories, namely : Perthuis, « Hubert, Mille Vaches, Mingan, and the island of Anticosti, are « not settled, the tenure under which the said seigniories are « now held by the present proprietors of the same respectively, « shall be and is hereby changed into the tenure of *franc aleu* « *roturier.* »

This is an absolute statement by the Legislature that there was a seigneurie of Mingan. Even if it could be proved that the Legislature was deceived, it would not be competent for a court of law to disregard its enactments. If a mistake has been made the Legislature alone can correct it. The Act of Parliament has declared that there was a seigneurie of Mingan, and

that thence forward its tenure shall be changed into that of *franc aleu roturier*. The Courts of law cannot sit in judgement on the Legislature, but must obey and give effect to its determination.

It remains only to consider what was the seigneurie of Mingan to which the Act of 1856 referred. It has been contended for the Crown that there was a seigneurie of the isles and islets of Mingan which may have been intended. The answer to this contention is that the proper name of this last-named seigneurie was that of « the isles and islets of Mingan, » and that there is no trace of evidence that it has been on any occasion otherwise designated, or that it has ever been known as the *Seigneurie de Mingnan*.

An examination of the Act further proves that a seigneurie on the mainland was contemplated.

The original Act provides for the appointment of Commissioners (Sec. 2), to whom (Sec. 4) the Governor shall assign the seigneurie or seigneuries in and for which each of them shall act, and whose duty it shall be (Sec. 5) « to value the several « rights,.....with regard to each seigniory which shall be « assigned to him as aforesaid. »

By virtue of these provisions Henry Judah, one of the Commissioners, had assigned to him the making of the *cadastre*, and the valuation of the rights of the seigneurie of Mingan, and he has discharged his duties specifically with regard to the « seigneurie of the *terre ferme de Mingan*, » while on the other hand no mention has been made of the seigneurie of the isles and islets of Mingan.

Before beginning to prepare the schedule for any seigneurie it was the duty (Sec. 7 of the Act of 1854) of the Commissioner to give public notice of the place, day, and hour at which he

would begin his inquiry; he had power to examine on oath any person appearing before him.

Immediately after the making of the schedule the Commissioner was bound (Sec. 11 of the Act of 1854, and Sec. 5 of the Act of 1856) to give eight days public notice that such schedule would remain open for the inspection of the seignior and the *censitaires* of the seigniory during thirty days following the said notice, « and any person interested in the schedule may point « out in writing any error or omission therein, and require that « the same be corrected or supplied. » Provisions are also made for the revision of the schedule, and it is enacted (Sec. 8 of the Act of 1856) that no revision shall be allowed, unless application be made for the same within fifteen days after the Commissioner shall have given his decision under Sec. 11 of the Act of 1854; and by the 10th Sec. of the Act of 1855 it is enacted that « after « any schedule shall have been completed and deposited under « the said Act, it shall not be impeached, or its effect impaired « for any informality, error, or defect in any prior proceeding « in relation to it, or in anything required by the said Act to be « done before it was so completed and deposited, but all such « prior proceedings and things shall be held to have been rightly « and formally had and done, unless the contrary expressly « appear on the face of such schedule; and the same rule shall « apply to all proceedings of the Commissioners under the said « Act, so that no one of them, when completed, shall be impeached « or questioned for any imformality, error, or defect in any « previous proceeding, or in anything theretofore done or omitted « to be done by the Commissioners or any of them. »

It was open, therefore, to the Government on the one hand, or the persons claiming to be proprietors of the seigneurie of the *terre ferme* of Mingan, to have complained in due time and in the manner prescribed, of any error in the schedule. As no

such complaint was made, the schedule as deposited must be deemed to be correct.

Now, by the schedule drawn up by Henry Judah (dated the 23rd January 1864) it is certified that the « *seignevrie de Mingan* « *ou de terre ferme de Mingan* » is scheduled in the country and district of Saguenay, and is not conceded ; it contains fifty leagues of frontage by two leagues of depth, extending from Cape Cormorant up to the river Goznish, forming an area of 705,400 *arpents*, and is bounded in front by the river St. Lawrence, and along its depth and two sides by the public domain

This schedule, with the Act under which it was made, must now be deemed to have conclusively established the existence and boundaries of the *Seigneurie de Mingan* referred to in the 10th Section of the Act of 1856.

Mr. Justice Routhier by an independent examination of the evidence has arrived at the conclusion, in which their Lordships entirely concur, that the territory in which the right to make establishments for fishing, &c., was granted by the Concession of 1661, did not extend further eastward than the river Goznish, and that there is no foundation for the claim to extend it to Brador Bay in the strait of *Belle Isle.* Their Lordships concur with Mr. Justice Routhier in thinking that the bay referred to in the Grant of 1661 as that where the Spaniards ordinarily fished was not that which is now called Brador Bay, but was, the one indicated as the *Baye des Espagnols* on the map, presumably drawn up on the information of Sieur Jolyet, an experienced navigator, and, one of the parties having an interest under the Concession of 1661. This bay exactly answers the description given in the Grant of 1679 to Laland and Jolyet of the seigniory of the isles and islets of Mingan, « which follow « one another to the bay called *l'Anse aux Espagnols*, and to the position assigned to it in the map of 1678, near the eastward end

of those islands and near a place or river marked « Esquimaux. » It is, however, unnecessary to examine this question in detail, as their Lordships are of opinion for the reasons already given, that the schedule drawn up by Mr. Judah is conclusive on the subject of boundary.

Their Lordships will humbly advise Her Majesty that both appeals be dismissed, and that the Judgment of the Court of Queen's Bench be affirmed, and they direct that the parties pay their own costs of the appeals.